

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 1584. Membership Fees.

A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 1584, *Membership Fees*, became effective on August 2, 1996. However, the Board's regulations are presumed to be retroactive and "The board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect." Therefore, the Board included subdivision (c) in the original text of the regulation to limit the regulation's retroactive effect and specify that "The provisions of this regulation are operative January 1, 1996."

Now, Regulation 1584, subdivision (c), is obsolete because all of the quarterly and annual reporting periods that began prior to January 1, 1996, which were originally effected by subdivision (c)'s January 1, 1996, operative date, ended more than 14 years ago. For example, the most recent reporting period to begin prior to subdivision (c)'s operative date, the reporting period for the fourth quarter of 1995, began on October 1, 1995, and ended on December 31, 1995, more than 14 years ago.

Furthermore, the Board does not expect to issue any new assessments or receive any new claims for refunds for reporting periods that began prior to January 1, 1996. In general, when a timely return is filed for a particular reporting period, the Board must issue a notice of determination for any under-reported tax for that reporting period within three years from the due date of the return. If a timely return is not filed for a particular reporting period, the Board must issue a notice of determination for any unreported tax within eight years from the due date of the return for that reporting period. (Rev. & Tax. Code, § 6487.) For example, if a taxpayer filed a timely return for the fourth quarter of 1995 by the January 31, 1996, due date, the Board would have had to issue a notice of determination by January 31, 1999, to assess any amounts the taxpayer under-reported on its return and the fourth quarter of 1995 would be closed for purposes of assessment after that date. If a taxpayer failed to file a return for the fourth quarter of 1995 by the January 31, 1996, due date, the Board would have had to issue a notice of determination by January 1, 2004, to assess any amounts the taxpayer failed to report for the fourth quarter of 1995 or the fourth quarter of 1995 would be closed for purposes of assessment after that date. Therefore, the Board does not expect to issue any new notices of determination for reporting periods that began prior to January 1, 1996, and these reporting periods are now closed for purposes of assessment.

In addition, the Board can only grant refunds of overpayments if a timely claim for refund is filed within the later of:

- Three years after the due date of the return for which the overpayment was made;

- Six months from the date of the overpayment or, if the overpayment was collected through levies, liens, or other enforcement procedures, three years from the date of the overpayment; or
- Six months after the date a determination became final for overpayments made pursuant to a determination. (Rev. & Tax. Code, §§ 6902 and 6902.3.)

For example, a claim for refund for amounts paid with a timely filed return for the fourth quarter of 1995 would have been due by January 31, 1998. A timely claim for refund for amounts paid on January 1, 1998, to cover unpaid liabilities that were reported on a timely filed deficiency return for the fourth quarter of 1995 would have been due by July 1, 1998, however, if the January 1, 1998, payment was collected through the use of enforcement procedures, the claim for refund would have been due by January 1, 2001. Finally, if the Board issued a notice of determination for under-reported or unreported tax for the fourth quarter of 1995, the taxpayer filed a timely petition for redetermination, and the taxpayer made payments on the determination before it became final on January 1, 2001, then a claim for refund for any payment made in response to the determination would have been due by July 1, 2001. Therefore, the Board does not expect to receive any new timely claims for refund related to payments for reporting periods that began prior to January 1, 1996, and the Board has determined that it is no longer necessary for Regulation 1584 to specify that it was not operative before January 1, 1996.

As a result, the State Board of Equalization (Board) proposes to delete Regulation 1584, subdivision (c), pursuant to California Code of Regulations, title 1, section (Rule) 100. The Board has determined that the change deleting Regulation 1584, subdivision (c), is appropriate for processing under Rule 100 because it does not have any regulatory effect and does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. This is because all of the reporting periods that began prior to January 1, 1996, ended more than 14 years ago, the Board does not expect to issue any new notices of determination or receive any new claims for refund for those reporting periods, and the reporting periods are therefore closed for all material regulatory purposes.

B. Proposed Change to Regulation 1584

Regulation 1584. Membership Fees.

(a) Application of Tax.

(1) . . . (unchanged.)

(A) . . . (unchanged.)

(B) . . . (unchanged.)

(2) . . . (unchanged.)

(3) . . . (unchanged.)

(4) . . . (unchanged.)

(b) Nominal Amount.

(1) . . . (unchanged.)

(2) . . . (unchanged.)

~~(c) Operative Date. The provisions of this regulation are operative January 1, 1996.~~

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011.1, 6012 and 6012.1, Revenue and Taxation Code.